IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3353 OF 1992

Burzeen Rohinton Driver ..Petitioner

versus

Abdul R. Mohamedsaheb Addewala
& Ors. ..Respondents

Mr. S. Raokar h/f. Mr. Vaze for the Petitioner.

Mr. S. Mahadik for the Respondents No.2.

CORAM : D. G. DESHPANDE, J.

DATE : 14TH SEPTEMBER, 2006

ORAL ORDER :

1. Heard Advocate for the Petitioner and Advocate for the Respondent No.2.

2. The petitioner had filed an application before the Motor Accident Claims Tribunal, Bombay, vide Application No. 1360 of 1988. That was an application in his claim petition for compensation. Evidence was led before the Tribunal by the Petitioner. Then opposite party also examined their witnesses. The petitioner found that there were contradictions in the evidence given by the driver

before the Tribunal vis-a-vis the statement of the driver given to the police during investigation. The petitioner therefore wanted to confront the driver with the statement given to the police. He therefore filed an application before the Tribunal. The Opposite party i.e. the Respondent No.2 gave its say to the following effect:

> **"I leave to the court. However if the applicant is allowed to lead evidence the opposite party reserves its right to lead further evidence."**

Thereupon the court passed an order:

> **" As original statement is not produced in the application, prayer made by the applicant stands rejected".**

It is against this order that the present petition is filed in 1992. Claim petition for compensation for accident to him is pending since 1988 because at the time of admission ad interim relief in terms of prayer clause (b) was granted. Therefore, claim petition of 1988 is pending since last 18 years on a

trifle and miscellaneous matter. In any case the order of the MACT cannot be upheld. If at all the petitioner wanted to confront the witness with his earlier statement, the MACT should have given opportunity to the petitioner to summon Investigating Officer with the case diary and if the case diary contained original statement of the said driver under Section 162 of the Criminal Procedure Code, then the court could have allowed the petitioner to confront the said driver with his earlier statement. Merely because the original statement under Section 162 of Criminal Procedure Code was not accompanying the application, the MACT was not justified in rejecting the application. In any case the maximum and full opportunity ought to have been given to the parties to lead evidence on merits, therefore, this petition is allowed. The impugned order is set aside. Petitioner is permitted to summon the Investigating Officer along with original statement and the case diary and if the summons is produced then the petitioner will be permitted to confront the driver with the said statement vis-a-vis his evidence before the Tribunal. Needless to say that the opponent will be at liberty to lead evidence in rebuttal.

3. In the result, the petition is allowed. Rule made absolute in these terms. This order to be communicated by both the sides to the Tribunal by certified copy of this order. They should appear before the Tribunal on 5.10.2006 at 11.00 a.m. and the Tribunal should decide the main claim petition within two months therefrom, without fail. Both the parties to give full co-operation for early disposal of the claim petition. Certified copy expedited.

(D.G. DESHPANDE, J.)